

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2270 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BARODA MUNICIPAL SERVANT UNION

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

MR BHARAT T RAO for Petitioner

None present for the respondent.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03.12.1997

CAV JUDGEMENT

1. By this Special Civil Application, the petitioner-Baroda Municipal Servant Union challenges the order of the Commissioner of Vadodara Municipal Corporation, at Annexure-E, dated 3rd March, 1993, by which certain benefits which had been given to the employees working in the Octroi section of the Corporation under the Award of the Industrial Tribunal

have been reduced.

2. Briefly stating, the facts of the case are that, the petitioner-union had raised an industrial dispute on 22nd February, 1979 demanding heavy duty allowance at the rate of 15% to the employees who are rendering their services in the Octroi Department of the Corporation. This demand, as usual, was not acceded to by the Corporation and, consequent upon that, the State Government referred the matter for adjudication to the Industrial Tribunal, at Ahmedabad, where the same came to be registered as Reference (IT) No.599 of 1981. Later on, this Reference was transferred to the Industrial Tribunal at Vadodara, where it was renumbered as Reference (IT) No.222 of 1984. In the said Reference, the Industrial Tribunal, Vadodara, passed the award on 10.11.1986, directing the Vadodara Municipal Corporation to pay heavy duty allowance at the rate of 10% from 1.11.1980 to the employees who are serving in its Octroi Department. The Corporation carried the matter before this Court by filing Special Civil Application No.7079 of 1987. The said petition came to be dismissed by this Court on 11.1.1991. Thereafter, the award passed by the Industrial Tribunal, as aforesaid, and confirmed by this Court has been implemented by the Vadodara Municipal Corporation. Under the impugned order passed by the Municipal Commissioner of the Corporation on 3rd March, 1993, the heavy duty allowance was ordered to be paid at the rate of 5% and that order gives cause to the petitioner to come before this Court by way of this Special Civil Application.

3. The learned counsel for the petitioner while challenging the legality, validity and correctness of the order impugned in this petition, made manifold contentions. But I do not consider it to be necessary to advert to all those contentions as, in my considered opinion, this Special Civil Application deserves to be accepted only on the ground that the order impugned has been passed without giving any notice or opportunity of hearing to the concerned employees.

4. In paragraph 5.13 of the petition, it is submitted that the impugned order has been passed without giving any opportunity of hearing to the petitioner. This contention has been raised by amending this Special Civil Application. This petition came up for admission before this Court on 22.3.1993 and the order passed by this Court on that day reads as under :-

"Leave to amend.

Rule.

Interim relief in terms of para 8(b). It is clarified that it will be open to the respondent to move this Court for hearing as to interim relief within a period of fifteen days from the date of receipt of the writ of this Court. If the Court is not moved within the aforesaid time limit, interim relief granted herein will continue till the final disposal of the petition."

After the service of the notice of Rule, the matter was heard on 16th April, 1993 and the order passed by this court reads as under :-

"Heard the learned counsel for the respondent-Corporation as regards interim relief. There is nothing to show that the impugned order Annexure-E is passed after affording an opportunity of being heard to the concerned workman. On this ground alone, the petitioner has a strong prima facie case. In this view of the matter, the impugned order cannot be permitted to be operated. Hence, interim relief granted earlier is ordered to continue till further orders.

Learned counsel for the respondent-Municipal Corporation states that the Corporation is desirous of affording an opportunity of being heard to the workman concerned. If and when such an opportunity is given and the necessary details are placed on record, the same will be considered on merits."

5. From the order of this Court dated 16th April, 1993, it is clear that this Court has found the prima facie case in favour of the petitioner on the ground that the order impugned in this Special Civil Application had been passed without giving any notice or opportunity of hearing to the petitioner. Though this order has been passed on 16th April, 1993 and this ground has been noticed by this Court and that has prevailed to the extent of ordering the interim relief to continue till further orders, yet the Corporation has not chosen to file reply to the Special Civil Application and, hence, the averments made by the petitioner in the petition stand uncontroverted. Not only this, the Corporation has not produced any material on the record of this petition

to show and explain to the satisfaction of this Court that the order impugned has been passed after giving an opportunity of hearing to the petitioner or to the affected persons. The order impugned in this Special Civil Application has serious repercussions as it affects the civil rights of the employees who are working in the Octroi section of the Corporation. The benefit of heavy duty allowance was given to the employees by the Corporation in pursuance to and under the award of the Industrial Tribunal, which has been confirmed by this Court. The deduction of the rate at which the heavy duty allowance is to be paid is certainly an adverse order affecting the monetary benefits to be given to the employees of the Octroi section of the Corporation and even if it is considered to be an administrative order, still the principles of natural justice had to be adhered to. That precisely has not been done in the present case. The impugned order has remained under stay for all these years and even otherwise also, this is a fit case where the Corporation should be given the direction to pass appropriate order only after hearing the affected persons.

6. In the result, this Special Civil Application is allowed and the order impugned (Annexure-E to the petition) dated 3rd March, 1993, passed by the Vadodara Municipal Commissioner, is hereby quashed and set aside. This judgment will not come in the way of the respondent-Corporation to pass the fresh order after following the principles of natural justice, i.e. after giving an opportunity of hearing to the affected persons. Rule is made absolute in the aforesaid terms with no order as to costs.

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